IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 379 of 1993

Date of Decision: 18-12-2007.

State of H.P. ……..Appellant.

Versus

Nikra Ram and another. ……..Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? . yes

For the appellant	**:**	**Mr.S.D.Vasudev, Addl. Advocate General with Mr D.Nainta, Deputy Advocate General.**
For the respondents	**:**	**Mr Yoginder Pal and Mr Dinesh Sharma, Advocate.**

Surinder Singh, J.

The respondents, father and son were tried and acquitted by the trial court of the offences punishable under section 302, 201 read with section 201 of the Indian Penal Code, allegedly for committing the murder of Man Singh resident of Sarkaghat, District Mandi, which has been assailed in this appeal.

We have heard and gone through the record.

Succinctly, the prosecution case as emerges from the evidence on record is that PW4 Kuldip Singh resident of village Dahad and Man Singh

[1] Whether reporters of the Local papers are allowed to see the judgment? yes.

(deceased), both were friends. Both of them were working as labourers at Delhi. On 19.2.1990 they came to Bilaspur to attend the marriage of their common friend Jagat Ram. On the same day at about 2 p.m. they reached village Jeori Pattan and consumed half bottle of liquor and took the remaining half with them. Thereafter, around 4 p.m. they boarded boat of the respondent Mast Ram to cross Gobind Sagar to reach village Dahad where the deceased was to stay for the night with Kuldip Singh. There were about 20 female and 6 male passengers in the boat. When they were about to reach village Dahad, Man Singh (deceased) took out the remaining half bottle of liquor and a tumbler. The tumbler fell from his hand into the lake and he fell on the rope tied to the boat, meant to pull it to the shore. On this Mast Ram respondent abused Man Singh aforesaid. Kuldip Singh intervened and requested Man Singh if he had caused any damage, he would pay the money but Mast Ram kept on abusing and took out the boat engine handle Ex.P1, and gave its blow on right eye of Man Singh. The boat was stopped at Dahad *ghat*, when Kuldip Singh was helping Man Singh to alight, Mast Ram respondent started throwing away their luggage out of the boat. In the meantime Nikra Ram respondent, father of Mast Ram came there in

another boat with 2-3 persons armed with lathies and shouted that Kuldip Singh and Man Singh be not allowed to go. Man Singh remained there but Kuldip Singh and one Nikka Ram ran away. Mast Ram respondent dragged Man Singh from his legs and he along with Nikra Ram respondent started beating Man Singh with lathies. Thereafter, both the respondents also chased Kuldip Singh and caught hold of him. He pleaded for mercy but he was also given lathi blow on his arm by respondent Nikra Ram. Kuldip Singh ran away and the respondents came back. Kuldip Singh reached his village around 7.30 p.m. but Nikka Ram had already informed his villagers and the search of Man Singh started but neither he nor his luggage was found.

On 20.2.1990, Kuldip Singh went to the police station, Bilaspur and informed the police. On the application (Ex.PD) of police, he was got medically examined on the same day by Dr. A. K. Sharma (PW2), he noticed the following injuries on his person:

a) Abrasion on the left shoulder 2 x 2 cm brownish scab is formed (only skin involvement) tenderness of joint plus, no evidence of fracture of dislocation as he can move his arm well.

b) Abrasion on the right hip near the joint 1 x 1 cm brownish scan is formed. Tenderness of joint positive, no evidence of fracture or dislocation of the joint.

c) Injury on right forearm (back) 1 cm in length, margins lacerated 1 mm in depth, brownish scan formed, no fresh sign bleeding, pain was present and X-ray of forearm right side was advised.

d) Two abrasion above the right eye brown 2 cm in length ½"in breadth brownish color tenderness positive.

e) One small abrasion on back (mid line near L-1 vertebra, 1 cm in length superficial dermis is involved.

All the injuries were simple in nature but the Doctor had referred Kuldip Singh for X-ray with respect to Injury No.3. However, no fracture was detected by S.N. Agnihotri (PW3) Radiologist.

On the application of Kuldip Singh Jia Lal Sub Inspector (PW17) Police Station Bilaspur, along with other police officials alleged to have visited village Dahad on 22.2.1990 around 4 p.m., which was about 50 kms from the police station, where the police is said to have met Bohru Ram (PW5) and recorded his statement (Ex.PN) under section 154 Cr.P.C. to the effect that he along

with respondent Pawan Kumar s/o Mast Ram, Pyar Singh and Karam Chand were the members of the band-party and had gone to village Dahad on 17.2.1990 to play the band in a marriage. On 19.2.1990 at about 5.30 p.m. they returned to their village. On the way near the river bank above Naral-ghat at about 6.30 p.m. they noticed that some quarrel was going on, above Dahad-ghat and they heard the cry ***"Maartah Maarta"*** (I have been killed, I have been killed). They came to Dahad ghat and boarded the boat of Gilu Ram, when their board crossed the two boats standing there, Bohru Ram saw that Mast Ram and Nikra Ram respondents and one another person were dragging a boy who was presumably dead and brought his body near to their boat. They also saw a white attaché-case, lying at some distance. Mast Ram was having a boat engine handle in his hand and Nikru Ram and one another person (who was not known) were having Dandas in their hands. Thereafter, they went upside towards their village. It was growing dark. Out of fear he (PW5) alighted at a village Dehanighat. According to him, he was suffering from stomache, therefore, there was a delay of two days in lodging the report.

On this statement, the FIR Ex.PN/1 was lodged under section 302 read with section 34

Indian Penal Code against the respondents, on the same day at 6 p.m.

PW 17 Jia Lal proceeded to the spot and prepared the site plan Ex.PV on 22.2.1990.

On 24.2.1990 the respondents were arrested.

The dead body of Man Singh was found on 28.2.1990 in the evening in Gobind Sagar lake, which was extracted on 1.3.1990

On conducting the personal search of the dead body, police recovered Rs.1624/-. The police prepared the inquest repot Ex.PG and dead body was sent for autopsy through an application Ex.PA.

POST MORTEM FINDINGS

On 2.3.1990 Dr. Goswami (PW1) of District Hospital Bilaspur had performed the post mortem of the dead body. The post mortem report is Ex.PM

The tongue of the dead-body was protruding. The dead body was emitting foul smell. The clothes were soiled with mud. The stiffening of the body was present.

There was transverse lacerated injury over right upper eye-lid. Eyes were closed, blood secretion was found from the right eye. It was a penetrating injury. The anatomy was distorted. There were numerous lacerations present on the right ear. Scrotum and penis were congested.

The stomach was found to have semi digested food and gaseous matter.

The viscera was preserved and sent for the chemical analysis. As per the report it contained alcohol. In the opinion of the Doctor, cause of death was injury on the right eye producing hemorrhage, shock and asphyxia. The time which elapsed between injury and post mortem was few minutes and between death and post mortem was less than 20 days.

On the same day i.e. on 2.3.1990 during their interrogation Nikra Ram & Mast Ram had made disclosure statements Ex.PQ and Ex.PR respectively that they had tied the attaché case with the muffler and was kept concealed in the sand under a stone at Dahadghat, which could be recovered by them. Pursuant to which they allegedly got recovered attaché-case vide memo Ex.PM.

On 6.3.1990 Mast Ram made the disclosure statement Ex.PJ pursuant to which danda was recovered vide memo **Ex.PJ**. On 7.3.1990 he is alleged to have made another disclosure statement followed by the recovery of the boat engine handle.

The police recorded the statement of the witnesses and Sita Ram Parmar Inspector/SHO (PW11)

presented the challan, against the respondents in the court for trial.

Finding a prima-facie case, the respondents were charge-sheeted for the murder of Man Singh and destroying the evidence under the aforesaid sections. They pleaded not guilty and claimed trial, at the end of the trial, the respondents were acquitted by the learned trial court disbelieving the prosecution evidence as the very genesis of the alleged occurrence was found to have been suppressed. Further the time of death of deceased did not synchronize with the time of the incident as stated by the witnesses being self contradictory and the recoveries were held to be suspicious.

OUR FINDINGS

We have thoughtfully considered the rival contentions and re-evaluated and legally scanned the evidence on record.

It is manifest that the deceased Man Singh and Kuldip Singh both were friends and came from Delhi together to attend the marriage and they had consumed liquor in a hotel, before boarding the boat of Mast Ram respondent as aforesaid. Even after boarding the boat, both continued taking liquor. The boat was full of male and female passengers. We have found that the

initial story which was propounded by Bohru Ram (PW5) was not substantiated by him when examined in the court. He has specifically stated that he was called by Kuldip Singh on 22.2.1990 to make the statement otherwise he would be involved in the case. Therefore, he had signed the statement (Ex.PN) under the pressure of police. According to him, the boat was full of passengers which was having about 15 lady passengers. Some fight was going on between 10/15 persons but he could not identify them.

According to ASI Jia Lal the Investigating Officer, he had reached the spot on the complaint of Kuldip Singh but that complaint was not appended by him with the challan. Kuldip Singh was having some injuries caused in a quarrel as stated in the application Ex.PD moved for his MLC. His medical examination was also conducted on 20.2.1990 at 8.30 p.m. whereas PW4 Kuldip Singh did not even state that he had gone to the police station on 20.2.1990 and was medically examined but according to him, he had reached police station on 22.2.1990 at 1 p.m. and remained there till 3 p.m. and had narrated the entire incident to the police. He had tried to cover up this delay in making the report that he along with other villagers kept on searching Man Singh deceased. In the aforesaid

circumstances Kuldip Singh is proved to be wholly unreliable witness.

Further the suppression of the complaint filed by Kuldip Singh or the entry in the daily diary on the basis of which he was got medically examined also make the case of the prosecution all the more doubtful. Those documents were quite material, its non-production impel us to draw an adverse inference against the prosecution.

As already stated above, the statement (Ex.PN) of Bohru Ram was alleged to have been recorded on 22.2.1990 and was made the basis of FIR Ex.PN/1 which was registered on 23.2.1990 in Police Station Bilaspur, Sadar, but it reached the local Magistrate at 6.30 p.m. on that day, which goes to show that it was recorded must later than shown to have been recorded on 23.2.1990, in these circumstances, we are constrained to observe that the time taken by Kuldip Singh in collusion with police to frame the case against the respondent was successfully used to suppress the truth with the aid of his co-villagers Makhan Singh, Sada Ram (PW8) the President Gram Panchayat, Kartar Singh and Piar Singh who also accompanied Kuldip Singh to the police station as admitted by him (PW4). It is stated by Kuldip Singh that the statements of the co-villagers were also recorded by the police but

Jia Lal ASI (PW13) has denied this fact. Thus, the conduct of the investigating officer has come under cloud and close scrutiny.

It is also significant to note that PW Jia Lal ASI aforesaid has stated that he had been searching for Man Singh (deceased) on 20th and 21st February at Dahad, where the alleged occurrence had taken place, which means that the police had already seized of the matter on the complaint of Kuldip Singh, which was withheld as stated above. Therefore, the story of the prosecution that Kuldip Singh had informed the police on 22.2.1990 and on the same date proceeded to the spot is palpably false thus there remains no doubt that the police did not know about the occurrence even prior to recording of Bohru's statement Ex.PN on 22.2.1990. It appears that Kuldip Singh and the police were in search of a handy person, who could be used by them to frame the case against the respondent and their choice fell on Bohru Ram, who has categorically deposed that it was Kuldip Singh who had pressurized him to make the said statement as aforesaid under the pressure of police.

It is also important to note that the prosecution had relied on his statement (PW5) even no permission was sought from the court to cross-examine him disputing the above statement. The

other regrettable feature of the case is that as per the case of the prosecution and also the statement of Kuldip Singh the occurrence had taken place in the boat but according to the statement Ex.PN aforesaid, the scene of occurrence was upwards, away from the river bank at Dahadghat.

There is also another important circumstance which goes against the prosecution. One Mansho Devi was admittedly traveling in the same boat of Mast Ram on the day of alleged occurrence. She had also sustained injuries and she had made an application Mark X accusing Nek Ram and Kuldip Singh (PW4) to Superintendent of Police, Bilaspur. In her complaint, it is mentioned that there were three persons Nek Ram, Kuldip and one more person in the boat sitting along other passengers, who were totally drunk and continued consuming liquor. All of them were quarrelling with each other on the settlement of their account. Out of them, two fell unconscious. When the motor boat reached Dahadghat the third passenger who she did not know removed them out of the boat and left them at a distance, when <Mast Ram took his boat ahead, one person out of those three pelted stones on them and a stone hit her on the forehead causing a grievous injury. Thereafter, she was taken immediately in the same boat to Narhal and was got

admitted in the hospital at Jhandutta where she remained under treatment for seven days. She had made a complaint to the Superintendent of Police, Bilaspur and made the allegation that police did register her case. As per Ex.D-1, it was shows to have been compromised and further inquiry was dropped on 17.3.1990, whereas Jia Lal ASI (PW17) has stated that Mansho Devi could not produce any witness from the spot to show that she had suffered the injury as alleged, therefore, her complaint was not further investigated although Sada Ram and Shobia had made the statement to him that Mansho Devi had sustained injury in the same incident. He further stated that he might have submitted the report to S.H.O. Sita Ram Parmar (PW11) about the above fact but PW11, aforesaid could not recollect, when examined in the court whether any such complaint was made earlier regarding the alleged occurrence, even he did not request the court to refresh his memory from the zimnies.

In the above circumstances the role of the Investigating Agency has become more dubious and questionable and lacks probity.

The next circumstance, which raises a doubt and has created another dent to the prosecution case is that PW1 Dr.G.Swami has stated about the presence of rigor mortis on the dead body of Man

Singh at the time of post-mortem examination. There was a semi digested food in the stomach and intestines. According to him, the food was consumed 3 to 8 hours before his death. He could say whether the fatal injury was anti-mortem or post-mortem. On the examination of viscera by the Chemical Analyst, it contained alcohol. The report is Ex.PC. The cause of death was opined to be the injury on the right eye producing hemorrhage and shock and asphyxia. The incident had taken place on 19.2.1990, the dead body was found in river on 28.2.1990 which was extracted from the water on 1.3.1990 at 9 a.m. The rigor mortis was found present. The putrification had not set in. Generally, the rigor mortis last for 2-3 days and may be for 10 days if it is a case of alcoholic poisoning which was not the case of the prosecution. The food digest within 2-3 hours even earlier, if the person had taken liquor as stated by the Doctor. Therefore, in these circumstances the time of death also does not match the alleged incident.

It transpires that Kuldip Singh (PW4) was a local resident and the deceased belonged to Sarkaghat, far away from the said place. The local residents appears to have tried to save Kuldip Singh and the third person whose identity was not

established thus the case was cooked up against the respondents in collusion with the Investigating Agency and the real genesis of the occurrence remained behind a veil.

The alleged recoveries made much after the arrest of the respondents are farce having no legal sanctity at all.

On having considered the entire evidence on record, we have come to conclusion that the learned trial court has aptly picked up the circumstances put forth discussed it properly and rightly gave the findings of acquittal.

For the reasons aforesaid, we do not find anything which could impel us to reverse the findings of acquittal, as these are borne out from the record. Therefore, the appeal is dismissed. The respondents are discharge of their bonds.

(Surjit Singh),J.

December 18,2007 (Surinder Singh),J.
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